

OPEN MEETING ITEM



0000010674

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 JUL 20 P 1:51

RECEIVED

22

DATE: July 20, 2004

DOCKET NO: RR-02635B-04-0207

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
(GRADE SEPARATED CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 29, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUL 20 2004

DOCKETED BY

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF FLAGSTAFF TO CONSTRUCT A
10 GRADE-SEPARATED CROSSING OF THE
11 BURLINGTON NORTHERN AND SANTA FE
12 RAILWAY AT 4TH STREET IN THE CITY OF
13 FLAGSTAFF, COCONINO COUNTY, ARIZONA.

DOCKET NO. RR-02635B-04-0207

DECISION NO. _____

14 OPINION AND ORDER

11 DATE OF HEARING: July 15, 2004

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal
15 Division, on behalf of the Utilities Division of
16 the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On June 10, 2004, the City of Flagstaff ("City" or "Flagstaff") filed with the Arizona
18 Corporation Commission ("Commission") a request for approval for the Burlington Northern and
19 Santa Fe Railway Company ("Railroad") to construct a grade-separated crossing over the Railroad's
20 tracks with the extension of 4th Street from the current intersection of Huntington/Industrial Drive to
21 Route 66 in Flagstaff, Arizona ("Application").

22 On June 27, 2004, by Procedural Order, the Application was set for a hearing and the City
23 was ordered to notify any interested party of the Application and the hearing.

24 On July 6, 2004, the City filed certification that notice had been provided pursuant to the
25 terms of the Procedural Order.

26 On July 15, 2004, a full public hearing was held before a duly authorized Administrative Law
27 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
28 matter was taken under advisement pending submission of a Recommended Opinion and Order to the

Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 10, 2004, Flagstaff filed an Application in which it requested an Opinion and Order from the Commission to approve an agreement between the City and the Railroad for the construction on 4th Street of a new grade-separated crossing over the tracks of the Railroad between 4th Street's intersections with Huntington/Industrial Drive and Route 66.

2. On July 6, 2004, ADOT filed certification that notice had been provided by certified U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on July 15, 2004.

4. The Application provides for the construction of a new overpass on 4th Street extending above and over the tracks of the Railroad between the intersection of Huntington/Industrial Drive and Route 66 in Flagstaff. When the overpass is completed, it will be the fourth grade-separated crossing in the area and provide for better traffic movement.

5. Staff testified that the cost for the construction of the overpass as provided in the Application will be funded by Flagstaff.

6. After construction of the grade-separated crossing, the 4th Street roadway overpass will be maintained by the City.

7. Staff has recommended that the Application be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The construction of the grade-separated crossing on 4th Street between its intersection of Huntington/Industrial Drive and Route 66 in Flagstaff, Arizona, is necessary for the public's

1 convenience and safety.

2 4. The Application should be approved as recommended by Staff.

3 **ORDER**

4 IT IS THEREFORE ORDERED that the City of Flagstaff's Application is hereby granted.

5 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
6 shall notify the Commission, in writing, within ten days of both the commencement and the
7 completion of the grade-separated crossing, pursuant to A.A.C. R14-5-104.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10

11 CHAIRMAN COMMISSIONER COMMISSIONER

12

13 COMMISSIONER COMMISSIONER

14

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2004.

18

19 BRIAN C. McNEIL
EXECUTIVE SECRETARY

20 DISSENT _____

21 DISSENT _____

22 MES:mlj

23

24

25

26

27

28

1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE
2 RAILWAY COMPANY

3 DOCKET NO.: RR-02635B-04-0207

4 Randy Whitaker
5 Project Manager
6 City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

7 Larry J. Delaney
8 Project Engineer
9 BNSF Railway Company
1624 First Street NW
Albuquerque, NM 87102-1538

10 Christopher Kempley, Chief Counsel
11 Legal Division
ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
Phoenix, Arizona 85007

13 Don Thompson
14 Railroad Safety Section
ARIZONA CORPORATION COMMISSION
15 1200 W. Washington Street
Phoenix, AZ 85007

16

17

18

19

20

21

22

23

24

25

26

27

28